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SUPREME COURT OF THE UNITED STATES

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OCTOBER TERM, 1939

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**No. 4**

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EVELYN TREINIES,

*Petitioner,*

*vs.*

SUNSHINE MINING COMPANY, KATHERINE MASON, T. R. MASON, LESTER S. HARRISON, GRACE G. HARRISON, WALTER H. HANSON, EDNA B. HANSON AND F. C. KEANE.

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OF APPEALS FOR THE NINTH CIRCUIT.

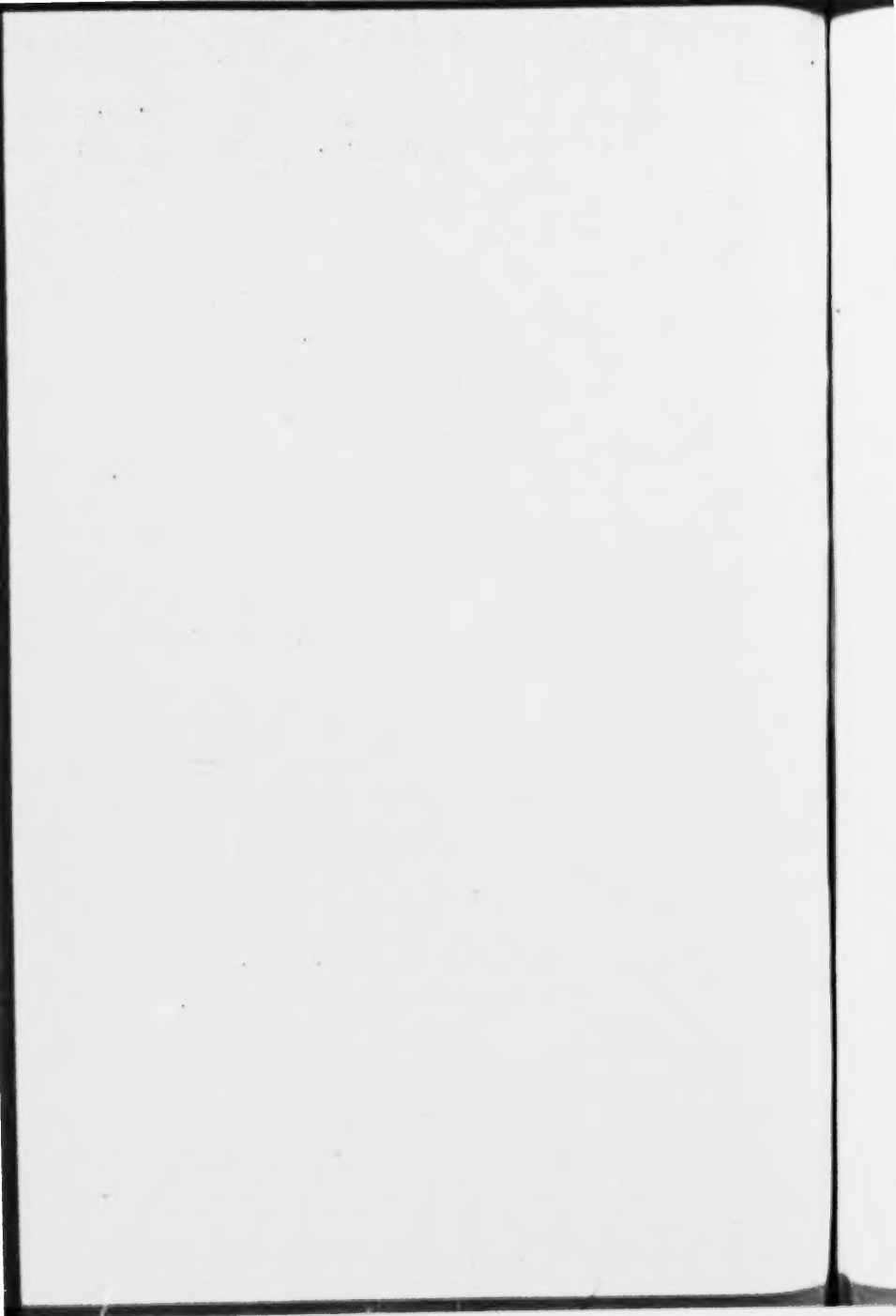
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**PETITIONER'S REPLY TO BRIEF OF RESPONDENTS  
KATHERINE MASON ET AL.**

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**PETITIONER'S BRIEF IN REPLY TO THAT OF THE  
RESPONDENTS OTHER THAN THE SUNSHINE  
MINING COMPANY.**

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These proceedings are before this Court for the purpose of solving two problems:

- a) Is the action brought by respondent, the Sunshine Mining Company, by virtue of the United States Interpleader Act, a proper one under the circumstances?
- b) If the United States Courts had the necessary jurisdiction of the case, did the full faith and credit clause of the Constitution not demand that the judgment of the Washington State Court, sitting in

probate, be entitled to full faith and credit, as the judgment of the Court having prior, continuous and exclusive jurisdiction of the subject matter and persons in this litigation?

It would seem that the respondents, other than the Sunshine Mining Company, have utterly failed to appreciate the above problems. This is shown conclusively by their "Statement of the Case" included in pages 2 to 8 of their brief. If the said "Statement of the Case" is intended as a "statement of facts", it can only be characterized as a tissue of misstatements intended to portray the respondents conception of the facts at issue between the principal parties in interest as tried in the State court of Washington and Idaho. We take it that this Court has little interest in such facts. Since these misstatements made by respondents permeate the entire brief, we shall here enumerate a few of them and state in a parallel column the contrary facts as found by the Washington Court:

As stated in respondent's Brief, page 3.

"After the entry of said decree of distribution Mr. Pelkes and Mrs. Mason at Kellogg, Idaho, divided equally between them in accordance with Mrs. Pelkes' intention and their agreement the property they then owned in common received from said estate, Mr. Pelkes holding the one-half interest in the certificate for 30,598 shares of Sunshine Mining Company stock and in the other stock certificates in trust for Mrs. Mason."

As found by Washington Court (R. 286).

"Upon the rendition of the decree of distribution aforesaid, and before any further steps had been taken in the cause, Katherine Mason discussed with John Pelkes a partition of the estate to which they were jointly entitled under the will of Amelia Pelkes. He was then 70 years of age she was 44. She had long been married, and resided with her husband, a physician, at Kellogg, Idaho, within a few miles of the prop-

As stated in respondent's  
Brief, page 3—Continued.

As found by Washington  
Court (R. 286)—Continued.

erty of the Sunshine Mining Company. She desired such a partition of the property of the estate as would give her, in her sole and undivided right, liquid assets which she could realize upon as she desired during the next few years. John Pelkes was willing that she should receive her share in such form as she desired (fol. 635), and it was agreed between them that he would deliver to her a mortgage for \$10,000 on property in Spokane, which had an appraised value of \$10,000, 6,000 bonds of the Interstate Utilities Company of the appraised value of \$5,100, and a promissory note of her husband, T. R. Mason, for \$1,000 and that those items should be received by her in full settlement and discharge of her distributive share of the estate of Amelia Pelkes; that, in consideration of her receiving that property, all the remainder of the property of the estate should go to and be received by John Pelkes in his sole and undivided right, in full settlement and discharge of his distributive share of the estate of Amelia Pelkes. In making this agreement, both parties had

As stated in respondent's  
Brief, page 3—Continued.

As found by Washington  
Court (R. 286)—Continued.

in mind the shares of mining stock belonging to the estate, including the shares in litigation, which had not been inventoried or administered on, and both intended and agreed that all those shares should go to and be received by John Pelkes in his sole right as a part of the distributive share of the estate to which he was entitled."

Respondents' Brief Pages  
3-4.

As Found by the Washing-  
ton Court (R. 286-7).

"In accordance with such agreement Mr. Pelkes and Mrs. Mason each became the owner of 15,299 shares of said Sunshine stock. Between the time of the entry of said final decree of distribution on August 9, 1923 and November 8, 1933, Mr. Pelkes sold disposed of and transferred 14,598 shares of the 15,299 shares of said stock owned by him. There thus remained but 16,000 shares of said stock, 15,299 shares of which Mr. Pelkes held in trust for Mrs. Mason. The wrongful disposition then attempted by Mr. Pelkes of said 16,000 shares of said stock to the petitioner herein, Mrs. Evelyn Treinies, is thus described by the Su-

"The partition agreement was fully performed so far as partition of the property was concerned. Katherine Mason received from John Pelkes, the property to which she was entitled thereunder and thereafter and enjoyed it in her sole right. John Pelkes took the remainder of the property of the estate and held and disposed of it as his own. No receipts were given for the received, no paper was executed or filed in court, and no steps were taken to close the estate, and the cause continued on the records of this court unclosed and without distribution of the property of the estate. Affairs so continued until 1934. About

Respondents' Brief Pages  
3-4—Continued.

As Found by the Washing-  
ton Court (R. 286-7)—  
Continued.

preme Court of Idaho :  
'Early in 1931, Pelkes and  
Mrs. Mason met, in Cali-  
fornia, appellant Evelyn  
H. Treinies, a niece of his  
deceased wife and a cou-  
sin of Mrs. Mason. She  
was at that time about 40  
years of age, and he had not  
seen her since she was a  
child. During the time the  
three were together appel-  
lant, Treinies, showed great  
affection for Pelkes, kissed  
him frequently and made  
proposal of marriage to him.  
She continued her attentions  
to him until the trial, and  
took care of him during some  
of his attacks of illness. No-  
vember 8, 1933, appellants  
Pelkes and Treinies, entered  
into a contract wherein it  
was agreed he should assign  
to her 16,000 shares (then  
market value \$3.00 per  
share) of the capital stock  
of the Sunshine Mining Com-  
pany (and other income pro-  
ducing property) and, in con-  
sideration thereof, she should  
support, maintain and care  
for him to the best of her  
ability during the remainder  
of his life'. (Mr. Pelkes was  
then 81 years of age.)

(Words in parentheses  
ours.) Following receipt of

1928 work done on the prop-  
erties of the Sunshine Min-  
ing Company showed value  
therein, and the stock in liti-  
gation began to have appar-  
ent value. As work pro-  
gressed the mines began to  
pay returns and dividends  
were declared on the Com-  
pany's shares, and by 1934  
the shares in litigation had  
a substantial market value.  
During that year, Katherine  
Mason and her husband,  
T. R. Mason, began an action  
in the District Court of the  
First Judicial District of the  
State of Idaho, in and for  
the County of Shoshone,  
against John Pelkes and  
others claiming to have an  
interest in the shares in liti-  
gation."

Respondents' Brief Pages  
3-4—Continued.

information in August, 1934, of such transfer of said stock to Mrs. Treinies suit in the State District Court of Idaho was instituted by Mr. and Mrs. Mason to enforce said trust as against said 16,000 shares as to the 15,299 shares thereof belonging to Mrs. Mason."

Respondents' Brief Page 5.

"Thereafter on May 31, 1935 the Superior Court of Spokane County, State of Washington, upon petition of Mr. Pelkes, entered in said probate proceedings of Amelia Pelkes, deceased, its "Findings and Order Approving Partition, Correcting Receipts for Distributive Shares and Discharging Executor," referred to herein by petitioner as the Washington judgment. Such "Findings and Order" were procured by Mr. Pelkes in violation of a restraining order directed to Mr. Pelkes and Mrs. Mason issued by the State District Court of Idaho in the said trust suit pending therein."

As Found by the Washington  
Court (R. 286-7)—  
Continued.

As Found by the Washington  
Court (R. 288).

"While the aforesaid action was pending, Katherine Mason filed in this court and cause a petition praying the removal of John Pelkes as executor of the will and estate of Amelia Pelkes and the appointment of an administrator with the will annexed to complete the administration of the estate. In that petition, which was verified by her, she alleged the probate of the will of Amelia Pelkes in this court, the appointment of John Pelkes as executor, the making of the decree of distribution, and the distribution of certain property of the estate to her and to John Pelkes, and that "• • • no proceedings were ever had or have been had to finally close said estate and that

Respondents' Brief Page 5—  
Continued.

As Found by the Washington  
Court (R. 288)—Continued.

said executor has never received a discharge nor filed any receipts from your petitioner for her distributive share of said estate."

(R. 292-3)

"While the aforesaid proceedings were in progress in this court, T. R. Mason affected to employ counsel in Idaho other than those who represented him and his wife in the Idaho action and in proceedings taken by him and by her in this court, *and upon this court issued an injunction pendente lite on the Pelkes petition, he procured from the Idaho court in which was pending the Idaho action aforesaid a temporary restraining order restraining John Pelkes, his attorneys, and all persons claiming by or through him, and Katherine Mason, her attorneys, and all persons claiming through her, from taking any steps or doing anything in this court and cause.*

I find that proceeding to be factitious, not prosecuted in good faith, and that the Idaho court was without jurisdiction to enjoin John Pelkes, an officer of this court, from taking such steps

Respondents' Brief Page 5—  
Continued.

As Found by the Washington  
Court (R. 288)—Continued.

as may be necessary or proper in the discharge of his functions as such officer. Neither was there jurisdiction, in view of the scope of the Idaho action, to enjoin Katherine Mason, a claimant to property of an estate in process of administration by this court from participating in the disposition and closing of the estate."

It will be observed from the above that Katherine Mason actually initiated the proceedings that resulted finally in the decree of May 31, 1935 upon Pelkes' cross-petition to Katherine Mason's original petition. It will be also observed that the Washington Court first issued an injunction pendente lite against Mrs. Mason and that, *after* that, the Masons secured their injunction in the Idaho Court, which proceedings Judge Lindsley of the Washington Court held to be "*factitious*", not prosecuted in good faith and that the Idaho Court was "without jurisdiction to enjoin John Pelkes, an officer of this court, etc."

Respondents lay considerable emphasis (page 6, Respondents' Brief) on the failure of this Supreme Court to grant a writ of certiorari to review the decision of the Supreme Court of Idaho in the case of Pelkes et al. vs. Mason et al., 299 U. S. 615.

Reference is made constantly throughout Respondent's Brief. If any reliance is placed upon the action of this Court in denying the said petition for certiorari it is clearly based upon a misconception of what the Idaho Supreme Court actually decided and of what a federal question really is.

That the Washington decree of May 31, 1935, was a final judgment by a court having prior, continuous and exclusive jurisdiction of the subject matter and was *res judicata* as to the issues of ownership involved therein, was duly pleaded by the Washington Group in the case instituted by the Masons in the Idaho State Court. During the trial of that case in the District Court of the State of Idaho the litigants stipulated as follows:

Mr. Cox: The parties stipulate that the District Court of the First Judicial District of the State of Idaho, upon appeal, may take judicial notice of the Statutes of the State of Washington and of the decisions of the Supreme Court of the State of Washington, with the same effect as is done by the Federal Court in the cases of its original jurisdiction; and that it shall be unnecessary to offer or to prove all the statutes of Washington or all the decisions of the Supreme Court of Washington—

The Court: As published either in the official reports of the Court or of the West Publishing Company—I mean the Pacific Reporter.

Mr. Cox: Yes.

Mr. W. G. Graves: Yes.

The said court, having these laws and decisions in mind rendered its decision in due time. Both parties appealed.

“Judicial notice may not ordinarily be taken of such foreign law; but the trial court may take such notice upon stipulation by the parties to that effect, in which event it will be presumed on appeal, in the absence of any proof on the matter, that the Court’s conclusions as to the validity and effect of the judgment were based upon and supported by some provision of these laws judicially noticed.”

15 Cal. Juris. 243-4; section 247.

*Fox. v. Mick*, 20 Cal. App. 599, 129 Pac. 972.

Notwithstanding the stipulation and the law on the subject the Idaho State Court refused (R. 186) to abide by the stipulation, refused to take judicial notice of the laws of the State of Washington as shown by the Statutes of that State, and the decisions of its Courts, and held:

“The record does not disclose what the law of Washington is with respect to this question. Proceeding on the theory that it is the same as in Idaho, we hold the Washington Court did not have jurisdiction to try and determine the question as to whether Pelkes held the stock involved in this suit in trust for Mrs. Mason.  
 \* \* \* ” (R. 187).

Clearly this was error on the part of the Idaho Court, but error relating solely to a question of procedure in its own courts and under its own laws. The Supreme Court of the United States obviously could not grant certiorari to review such a decision. Had the relevant laws of Washington been proved in that case as required by the Supreme Court of Idaho, that Court presumably would have ruled otherwise and would have granted to the Washington judgment the full faith and credit required by the Constitution. A question of local procedure only, and not a Federal question, being involved, certiorari was presumably correctly denied. This problem is discussed in Volume 11, of Black on Judgments, (2nd Edition) section 860, in the following language taken from a decision of the U. S. Supreme Court:

“Upon principle, and according to the great preponderance of authority, whenever it becomes necessary for a court of one state, in order to give full faith and credit to a judgment rendered in another state, to ascertain the effect which it has in that state, the laws of that state must be proved like any other matter of fact. In the exercise of its general appellate jurisdiction from a lower court of the United States, this court takes judicial notice of the laws of every state of the

Union, because those laws are known to the court below as laws alone, needing no averment or proof. But on a writ of error to the highest court of a state, in which the revisory power of this court is limited to determining whether a question of law depending upon the constitution, laws or treaties of the United States has been erroneously decided by the state court upon the facts before it, while the law of that state, being known to its courts as law, is of course within the judicial knowledge of this court at the hearing on error, yet as, in the State Court, the laws of another State are but facts, requiring to be proved in order to be considered, this Court does not take judicial notice of them, unless made part of the record sent up. But the question of taking such judicial notice (as distinguished from the question of giving to the judgment all the faith and credit it is entitled to) *is not a federal question*, but entirely one of local law."

*Hanley v. Donoghue*, 116 U. S. 1, 6 Sup. Ct. 242, 29 L. Ed. 535.

The condition stated in the case of *Worcester v. Riley* (58 Sup. Ct. Rep. 185, 188) that:

"differences in proof and the latitude necessarily allowed to the Trier of fact in each case to weigh and draw inferences from evidence and to pass upon the credibility of witnesses might lead an appellate court to conclude that in none is the judgment erroneous,"

was plainly before this Court, and since it had no power to review a State Court's decision for errors where no Federal question was involved, certiorari was necessarily denied. But that is not authority for the following conclusion of respondents:

"Even if the Idaho Court had misapprehended the Washington law, its judgment became final and conclusive in Idaho and was and is equally conclusive on the Courts of Washington and the Federal Courts." (Page 20, Respondents' Brief.)

If the Washington judgment (the decree of May 31, 1935) was, as we assert, a final judgment by a court that had prior, continuous and exclusive jurisdiction of the subject matter and the parties, *no* judgment of *any* court could supersede it. It was entitled to full faith and credit in all courts subject to proper proof of the judgment and the jurisdiction of the Court that rendered it as their several laws might require.

Respondents insist on the one-sided proposition that only the Idaho State Court's judgment is *res judicata*, even though rendered on an erroneous conception of the relevant laws of Washington and cite the case of *Roche v. McDonald*, 275 U. S. 449, in support of that assertion.

However, while the Idaho case was pending, its jurisdiction in the premises was considered by the Washington court. That court, commenting on the proceeding initiated by T. R. Mason in the Idaho State Court action whereby he sought to enjoin Pelkes and also his wife Katherine Mason from continuing the Washington proceedings in probate, said (R. 292-293):

"I find that proceeding to be factitious, not prosecuted in good faith, and that *the Idaho court was without jurisdiction* to enjoin John Pelkes, an officer of this court, from taking such steps as may be necessary or proper in the discharge of his functions as such officer. Neither was there jurisdiction, in view of the scope of the Idaho action, to enjoin Katherine Mason, a claimant to property of an estate in process of administration by this court from participating in the disposition and closing of the estate."

That clearly was a denial of jurisdiction in the Idaho court since, if that court had jurisdiction of the action at all, it had jurisdiction to do whatever it deemed to be necessary in the premises. Petitioners could with perfect propriety cite the *Roche v. McDonald* case (*supra*) in their sup-

port. We feel that the decision of the State Court of Idaho, was erroneous; that it erred in refusing to be bound by the stipulation of the parties on the trial that judicial notice of the Washington laws and decisions might be taken and consequently erred in its interpretation of Washington law but there is nothing that this Court can do about it unless it decides in favor of the jurisdiction of the United States District and Circuit Courts to entertain the present interpleader proceeding. Failing that, we arrive at the impasse suggested in the *Worcester County v. Riley* case: *i. e.* the existence of two conflicting decisions upon the same issues between the same parties in two different States.

This "conflict of decisions of the Courts of two States, which the Constitution does not forestall" (*Worcester v. Riley, supra*, page 274 in the L. Ed.) actually exists in the present litigation.

If not "forested" by the Constitution no Federal question arises by reason of such conflict and this Court is "stalled" as far as deciding the merits of said conflict since it has no power to review the decisions of State courts where no Federal question is involved.

From page 20 to the end respondents devote their argument to the proposition that the first decree of distribution of the Washington court, sitting in probate, dated August 9, 1923, by the omnibus clause mentioned closed the estate and cut off any further jurisdiction of the Court in those proceedings.

There is nothing further from the truth.

At page 20 of petitioner's opening brief the case of *In Re Dyer's Estate*, 161 Wash. 498, 297 Pac. 196 was cited in support of the proposition that:

"The Superior Court, sitting in probate, has continuing jurisdiction to compel the executor to account for assets which it is contended he has not distributed."

In that case, which closely parallels the instant one, it appears that:

“In the course of the administration he (the administrator) filed a final account and petition for distribution, and, on the day fixed for the hearing, of which statutory notice was given, the court made and entered an order approving the final account and decreeing distribution of the property.” (Parentheses ours.)

The petitioner therein appeared and demanded that the decree be set aside, and that a certain 200 shares of capital stock of a certain Dredging Corporation be inventoried and administered upon. It appears that the petitioner knew of this stock before the filing of the final account. The administrator claimed that the approval of the final account and the decree of distribution closed the estate and that petitioner was estopped from maintaining the proceedings.

The court said:

“There is some argument in the briefs and some suggestion was made by the trial court to the same effect, that, while the decree of distribution was not *res judicata*, as the stock, nevertheless, as was now too late to inject that matter into this administration, but that an administrator *de bonis non* would be required. With this we do not agree. *This administration is not closed.* The administrator has not been discharged. So far as power of the court in that respect is concerned, there is as much now for taking charge of additional assets as there was at the time the formal inventory was filed, or at any time since the administrator qualified. Notwithstanding the order approving final accounts and decreeing distribution of property mentioned and described in the inventory and decree, the administrator has not yet filed any receipts from the beneficiaries or distributees under the will, nor has he been discharged. Rem. Comp. St. Par. 1533, among other things, provides: ‘Upon the production of receipts from the beneficiaries or distributees for their portions

of the estate, the court shall, if satisfied with the correctness thereof, adjudge the estate closed and discharge the executor or administrator.' To the same effect: 'the approval of such final account does not determine the administration.' *Hazelton v. Bogardus*, 8 Wash. 102, 35 Pac. 602. 'The decree of distribution does not operate to relieve the appellant of his trust,' etc. *McCloughlin v. Barnes*, *supra*, State ex rel. Reser v. Superior Court, *supra*." (Italics supplied.)

Cases which were cited to the Superior Court of Washington in the Dyer brief from Missouri, Missouri being the State from which Washington borrowed much of its probate code, are two: *Ewing v. Parish*, 128 S. W. (Mo.) 538 (St. L. Ct. of App. (Mo.)), the syllabus of which reads:

"Although the judgment of the probate court on the final settlement of the administrator provided that the filing of the receipts from the distributees should be in full discharge of all funds held by him, where no receipts were filed by him because the distributees contested the settlement, the administrator continued to be such so as to recover assets unknown to him at settlement."

*State ex rel. Noll v. Noll*, 189 S. W. (Mo.) 582, the syllabus of which reads:

"The case of *Ewing v. Parrish*, 128 S. W. 538, cited by appellant, is not an authority for her position because in that case the probate court merely approved the final settlement, *but made no order discharging the administrator. Until that order is made the estate is not closed and hence the final settlement is not a binding judgment.*"

No omnibus clause, especially where the State has an interest in inheritance taxes, can avoid the jurisdiction of courts. It is to be noted that Katherine Mason herself, in the Washington Probate case, interested the State of

Washington in the tax question. Moreover, when the jurisdiction of a probate court is once invoked, the heirs may not by agreement amongst themselves, withhold a portion of the estate from administration, and, since both the court and State are interested parties, upon its being ascertained that there is additional property, administration must thereupon be had upon it.

Sec. 1462 *et seq.* Rem. Rev. St.: *Clark v. Clay*, 31 N. H. 393, 401-2; *Dantz, executor, v. Cooper*, 96 S. W. (Ky.) 454.

Blowing hot and cold is not looked upon with favor by the courts.

We have here an excellent illustration of that kind of proceeding. Respondents claim that the decree of distribution of 1923 (by way of its omnibus clause) operated to close the estate finally. That they did not think so while their action was pending in the Idaho State Court is clear from the language of Judge Lindsley in his "Findings and Order Approving Partition, Correcting Receipts for Distributive Shares and Discharging Executor" (R. 282). We quote from this order (R. 288-289):

"While the aforesaid action was pending, Katherine Mason filed in this court and cause a petition praying the removal of John Pelkes as executor of the will and estate of Amelia Pelkes and the appointment of an administrator with the will annexed to complete the administration of the estate. In that petition, which was verified by her, she alleged the probate of the will of Amelia Pelkes in this court, the appointment of John Pelkes as executor, the making of the decree of distribution, and the distribution of certain property of the estate to her and to John Pelkes, and that '\* \* \* no proceedings were ever had or have been had to finally close said estate and that said executor has never received a discharge nor filed any receipts from your petitioner for her distributive share of said estate.'

The petition further alleged that amongst other property of the estate of Amelia Pelkes were 30,598 shares of the Sunshine Mining Company, a number of shares of other mining companies, specifically describing them and \$10,024 in cash; that none of that property was inventoried or administered upon although the property '\* \* \* and all of it was an asset belonging to the estate of said Amelia Pelkes, deceased, and subject to probate in the above entitled court and proceeding.' and that

'\* \* \* the said John Pelkes, executor of said estate, has wasted and/or embezzled all of said property and that he has committed a fraud upon the estate and that he now is incompetent to act.'

Other matters were alleged for the purpose of showing the incompetency of John Pelkes further to act as executor, e. g. his age (84 years), infirm health, removal from the State of Washington, neglect of his duties. Then it was alleged: 'That under the terms of said will aforesaid, your petitioner is entitled to have distributed to her an interest in each and all of the property and effects as hereinbefore particularly described and that it is necessary that in order to complete the probate of said estate aforesaid, that some competent person be appointed as the administrator with the will annexed and of said estate. Your petitioner, being a daughter of said decedent and entitled under the terms of said will as aforesaid to share in said estate, and that upon the revocation of letters testamentary heretofore issued to the said John Pelkes, your petitioner requests that letters of administration with the will annexed issue to the said C. Harold Easter.' "

As a result of these further administration proceedings additional inheritance tax was paid the State. (Page 628 unprinted record.) Respondents at page 21 cite three California cases as authority for their claim that the decree of distribution closed the estate and that the omnibus provision was sufficient to pass title to uninventoried property. Those

cases are not applicable here. Paragraph 1533 of Rem. Rev. St. in force and effect throughout this litigation was enacted in 1917 and subsequent to the decision of *Prefontaine v. McMicken*, 16 Wash. 16, 47 Pac. 231, on which respondents rely. That paragraph provides (R. 65):

“\* \* \* Upon production of receipts from the beneficiaries or distributees for their portion of the estate, the court shall, if satisfied with the correctness thereof, adjudge the estate closed and discharge the executor or administrator.”

But the most carefully considered, well-reasoned discussion of the subject is found in the return of Judge Hawkins, in which he discusses the probate laws of the State of Washington, as follows:

“It is the opinion of this court that the Superior Court of the State of Washington in and for Spokane County, while sitting in probate, had exclusive jurisdiction over the estate of Amelia Pelkes, the assets thereof, the heirs, and all disputes between them involving title to those assets, until the entry of the decree of that court on May 31, 1935, and that it was its duty upon the issues presented to it, to inquire into whether or not a partition agreement had been entered into between John Pelkes and Katherine Mason subsequent to the entry of the decree of distribution on August 8, 1923, and to ascertain the terms thereof, adjudicate the rights of the parties arising from such agreement in the assets of the estate, including the stock in the Sunshine Mining Company, and compel the heirs to file accurate receipts showing the property they had received under the partition agreed upon between themselves, and that, until this was done, *the court had continuing jurisdiction not only of the heirs, but also of the property of the estate, and that it was a court of exclusive jurisdiction, so that no other court had the power to hear any controversy between those heirs relating to that property; and that the aforesaid decree of that*

court was a final adjudication in rem which prevented all other courts from entertaining litigation between Katherine Mason and John Pelkes or their privies involving any claims to the stock of the Sunshine Mining Company conflicting with that decree.

It is my opinion that these proceedings were entirely regular and in conformity with the procedure laid down by the statutory law of this state. In substance, the plaintiffs have relied on these proceedings in the amended complaint now before me, and it is my opinion that they have stated a cause of action entitling them to a decree quieting title in the stock now in the possession of the receiver of this court, unless their allegations are refuted. This being true, I am confronted with the problem of whether or not I may relinquish or transfer jurisdiction over property which is within the territorial limit of my court and within the possession of an officer of my court, and in which a litigant before me has, in my judgment, established a prima facie title. \* \* \* But the doubt still remains in my mind that I have the power to divest myself of a jurisdiction which I have acquired over property which is impounded by an officer of this court.

It is further my opinion that, upon the institution of the action which is now pending before me and the appointment of J. C. Cheney as receiver of this court and his impounding of the stock as such, this court became a court of exclusive jurisdiction, proceeding in rem to determine title to property which was in the possession of its receiver, and that for the reason of such determination it has acquired jurisdiction of all the parties defendant in the action now pending before me, and that for that reason it is doubtful whether any other court, including this Honorable Court, has jurisdiction to determine the rights of these parties in that property." (Italics supplied.) (Hawkins' Answer R. 40, 41, 42.)

The *Cogswell* case (189 Wash. 433) cited by respondents is in no sense contradictory. In that case the appellants sought a declaratory judgment in the estate proceedings at

a time long after the property had been distributed finally and the estate closed. Cogswell's will was admitted to probate in 1919. In 1933 Mrs. Cogswell filed a *final* report and petition for distribution as permitted by Rem. Rev. Stat. sec. 1462. Between 1919 and 1933 Mrs. Cogswell had sold various pieces of real property held by her under the will.

The Court said "It is a reasonable inference that Mrs. Cogswell petitioned for a final decree in order to perfect the title of her vendees."

It decreed that the property already sold be set aside to Mrs. Cogswell and that the purchasers from her should receive the benefit of her title. It dealt with property already administered under the will. As to it the estate had been closed and the court ruled that it had lost jurisdiction to make a different disposition in the proceeding then before it.

In sub-paragraph 4, page 26, of Respondents brief objection is made to petitioner's claim that the decisions of the Supreme Court of Washington in the prohibition cases brought against Pelkes by the Masons support the jurisdiction of the Superior Court, sitting in the probate proceedings herein frequently referred to. As stated by respondents, petitioner cites as authority for her claim Judge Hawkins' answer in the present action (R. 15, 22) as quoted by respondents but it appears in the unprinted record on file herein at pages 479 to 485 that the Masons directly challenged the jurisdiction of the Superior Court of the State of Washington alleging:

"That the said Superior Court of the State of Washington in and for the county of Spokane, is now and at all times has been without jurisdiction and without any authority to hear and/or try and/or determine the rights of this petitioner, and the said John Pelkes, arising out of said contract as hereinbefore alleged, and that said court is without jurisdiction in said estate proceeding to make any order of any kind, nature and/or description which would in anywise be binding

upon the prosecution of the action in any forum, and that said court was at all times herein mentioned and now is without jurisdiction to make any valid restraining order, either temporary or an injunction pendente lite, which in any manner affects the procedure of this petitioner in said Idaho action."

"That said Superior Court of the State of Washington, in and for the County of Spokane, has no authority whatsoever to attempt a hearing and/or trial of the rights of your petitioner and the said John Pelkes in that certain action now pending in said Superior Court and which action is entitled No. 15,496, in the Matter of the Estate of Amelia Pelkes, deceased."

It is reasonable to assume that if respondents were correct in their contentions in the Washington Supreme Court on the question of the jurisdiction of the Superior Court prohibition would have been granted. However it was denied.

Respondents at page 27, sub-paragraph 5, of their brief, urge the correctness of the decision in the United States District Court with respect to its analysis and findings on the Washington State law relative to the continuing jurisdiction of the Superior Court sitting in probate in the Pelkes Estate.

That decision relies largely on the case of *In Re Thompson's Estate*, 110 Wash. 635, 188 Pac. 784 (R. 333). That case, and also the case of *In Re Decker's Estate*, 105 Wash. 221, 177 Pac. 718, are distinguishable from the controlling case of *In Re Dyer's Estate*, *supra*, inasmuch as they involve disputes and controversies between third parties over private contracts or assignments in which the estate is not directly interested. They present questions which cannot be litigated in probate proceedings under any theory. They do not involve the adjustment of disputes between the heirs; the filing of receipts by the heirs or the question of the discharge of the executor or the closing of the estate, or the disposition of unadministered property.

*Reagh v. Dickey*, 183 Wash. 564, 48 Pac. (2nd) 941, is authority only for the well recognized proposition that a

decree entered by a probate court is as final and conclusive as any other decree unless affected by appeal. Certain California decisions have been cited at various times to the effect that an omnibus clause in a decree of distribution fixes title to property under probate proceedings. These cases are not applicable to the present case as the property herein was not inventoried, and so far as the administration was concerned, it must be treated either as recently discovered or as non-existent property, or, in any event, as unadministered assets; consequently, the present case falls within the rule enunciated in *In re Dyer's Estate, supra*.

Another limitation on the power of the Federal courts in interpleader proceedings may exist in the interference by these courts with the probate proceedings of a State. Thus in *Asher v. Bone*, 100 F. (2d) 315 (C. C. A. (1938)), it was held that a Federal court has no power to interfere with a decree of distribution of a State court under a will. It would not seem that the Federal Interpleader Act could be used as a means of defeating the purpose of that rule. If it can be held that the suit in the Superior Court of Washington for Spokane County was one under the probate proceedings started in 1923, it would necessarily follow that the Federal court in Idaho could not interfere with that proceeding and that it had no jurisdiction to determine by interpleader or otherwise, issues clearly within the Washington court's jurisdiction. In that connection, see *Kline v. Burke Construction Company*, 260 U. S. 226, 43 Sup. Ct. 79, 67 L. Ed. 226 (1922), where it was held that in actions *in rem* neither State nor Federal courts can exercise jurisdiction over the *res* after the jurisdiction of the court of the other sovereignty has attached to it.

Accordingly, it may well be argued in the present case that the United States District Court for the District of Idaho had no jurisdiction to entertain the interpleader action of the Sunshine Mining Company, first because the

statute invoked does not confer the power on the Federal courts to decide as between conflicting State decisions, and second because the statute is not intended to vest power in the Federal courts to interfere with the probate proceedings of a State court, contrary to the Federal law as established by the cases.

Assuming that the United States District Court for Idaho properly could consider the case before it on an action of interpleader, the further question is presented as to what effect should be given the conflicting State decisions of Washington and Idaho. It is a cardinal principle of conflict of laws that a judgment of a court of competent jurisdiction shall be given full faith and credit in the courts of all other States and in the Federal courts. This rule is derived from article 4, section 1 of the Constitution of the United States, and the Revised Statutes, Section 905, enacted thereunder. The rule has one qualification, namely, that the court rendering the judgment in question must have had jurisdiction over the controversy before it. Thus a judgment is open to collateral attack on jurisdictional grounds in the courts of another State and in the Federal courts, *Murray v. Magnolia Petroleum Company*, 23 F. (2d) 347 (D. D. N. D. Tex., 1927). Generally a Federal court must follow the decisions of the courts of the State in which it sits, *Erie R. R. v. Tompkins*, 304 U. S. 64, 58 Sup. Ct. 817, 82 L. Ed. 1188 (1937). However, there is another rule which requires a Federal court to give a State judgment the same effect it would have under the laws of the State where rendered, *Mitchel v. Cunningham*, 8 F. (2d) 813 (C. C. A. 9, 1925).

Under this rule, the district court must give effect to the Washington judgment as well as the Idaho judgment. Confronted with these rules and two conflicting judgments, it is submitted that the court's duty should have been plain, namely to investigate and ascertain for itself, (1) if the

State judgments were rendered upon a proper jurisdictional basis, and (2) which court had prior jurisdiction. It is likely that the full faith and credit clause would require recognition of both judgments, if properly founded.

It is clear, however, that both State courts could not have jurisdiction in equal degree over the same controversy. Therefore, one of them must take priority over the other. It is further submitted that the pronouncements in either judgment, as to which State has jurisdiction, should not be taken as determinative of the issue.

The Supreme Court has said in *Titus v. Wallick*, 83 L. Ed. (advance sheets) 539 (1939), that it is not bound by the decision of the State court on matters affecting the right to have the judgment accorded full faith and credit, especially where the decision is founded not on local laws but upon the law of a foreign State, which can as readily be determined in the Supreme Court as in the State court. See also to the same effect *Adam v. Saenger*, 303 U. S. 59, 58 Sup. Ct. 454, 82 L. Ed. 649 (1938). Thus it can be argued that the Federal court has the right and the power to go behind both judgments to ascertain for itself which one shall be accorded full faith and credit in the Federal courts. The Circuit Court of Appeals in the present case pointed out that the question of jurisdiction was before the Idaho court, and that that court had decided that Washington was without jurisdiction. The court then said the point could not be relitigated. However, in view of the statement of the Supreme Court in *Titus v. Wallick*, *supra*, it is submitted that Idaho's decision determining that Washington had no jurisdiction is not binding on the Federal court. This being so, that court must determine for itself whether or not Washington had jurisdiction. Such determination would require a study of the Washington statutes and their interpretation by Washington cases. This the Circuit Court of Appeals did not do. The decision of the circuit court in

effect construes the statutes of the State of Washington without a study of Washington cases interpreting them. The result reached gives a different effect to those statutes than that accorded by the Washington courts. This is contrary to established law as laid down by the Supreme Court in many cases. The rule is that in the absence of any Federal question the Federal courts are bound by the decisions of State courts construing their own statutes. *McCain v. Des Moines*, 174 U. S. 168, 19 Sup. Ct. 644, 43 L. Ed. 936 (1899); *Edward Hines, Yellow Pine Trustee, v. Martin*, 268 U. S. 458, 45 Sup. Ct. 543, 69 L. Ed. 1050 (1925); *Chesapeake and Ohio Railroad Company v. Public Service Commission of West Virginia*, 242 U. S. 603, 37 Sup. Ct. 234, 61 L. Ed. 520 (1917); *Hagar v. Reclamation District*, 111 U. S. 701, 4 Sup. Ct. 663, 28 L. Ed. 569 (1884); *Oates v. First National Bank*, 100 U. S. 239, 25 L. Ed. 580 (1879); *Smith v. Kernochen*, 7 How. 198, 12 L. Ed. 666 (1849).

Further, the Supreme Court has held that it will adopt the construction put upon administration laws of a State by the highest court of that State. *Security Trust Company v. Black River National Bank*, 187 U. S. 211, 23 Sup. Ct. 52, 47 L. Ed. 147 (1902); *Yonley v. Lavender*, 21 Wall. 276, 22 L. Ed. 536 (1875). Therefore, it is submitted that under the principles outlined above, the failure of the Circuit Court of Appeals in the present case to look into the matter of jurisdiction as established by the Washington statutes and decisions constitutes reversible error on the part of the court.

Respectfully submitted,

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*Of Counsel.*